

Opening Statement of the Honorable John Shimkus
Subcommittee on Environment and the Economy
Hearing on “H.R. ___, the Improving Coal Combustion Residuals Regulation Act of 2015 ”
March 18, 2015

(As Prepared for Delivery)

We welcome everyone back as we continue the discussion regarding coal ash. Today we are hearing from our stakeholder panel and because of some scheduling conflicts we will reconvene and hear from EPA next week.

A couple months ago we heard from EPA and stakeholders about the final coal ash rule. We discussed the problems associated with implementation – in particular, the fact that the final rule is self-implementing meaning there will be no regulatory oversight and no enforceable permits, the fact that if States implement permit programs they will not operate in lieu of the federal rule so regulated entities must comply with two sets of requirements, and the fact that the only mechanism for enforcement of the final rule is through citizen suits which would result in an unpredictable array of regulatory interpretations, as judges throughout the country are forced to make technical compliance decisions that are better left to a regulatory agency. As a result we heard from almost all of the stakeholders at our January hearing that a legislative solution is still needed to best regulate coal ash.

Since our last hearing, we have been working to develop a legislative solution that does two things – takes into account all of the hard work EPA put into developing sound technical standards protective of human health and the environment and second, utilize the framework developed in previous legislation requiring States to develop enforceable permit programs that will contain minimum federal standards.

This brings us here today to discuss the draft legislation we think accomplishes both of those goals. We are keeping the bill as a discussion draft because this is an open process during which we will continue efforts to collaborate with our colleagues in the House and our friends in the Senate, work with EPA on technical assistance, and of course welcome suggestions from all of you to improve the bill.

The basics of the discussion draft are simple. The bill requires that every state have a permit program and every permit program will contain minimum requirements based on EPA’s final rule. Every permit program will address inactive surface impoundments or “legacy sites” in the same manner as EPA dealt with them in the final rule – they will have to decide within 2 months from the date of enactment whether they will be closed within 3 years from the date of enactment or whether they will be regulated like any other active disposal unit. Compliance timeframes are comparable to the final rule and for any lag we will gain the benefit of having an enforceable permit program. Furthermore, the discussion draft does not in any way impact the ability to bring citizen suits. The draft legislation does not require owners and operators to post their operating records on the internet because that is a remnant of a self-implementing program, but the draft requires States to make information regarding groundwater monitoring data, structural stability, emergency action plans, fugitive dust control plans, certifications regarding closure, and information regarding corrective action remedies available to the public.

We heard from a number of witnesses at our last hearing that a key problem with the self-implementing final rule was that EPA was forced to eliminate certain flexibility – in particular with respect to groundwater monitoring and corrective action – due to the lack of State oversight. Because the requirements will be implemented through State permit programs, the draft legislation allows the implementing agency on a site-specific basis to provide flexibility for groundwater monitoring or corrective action taking into account risk-based factors.

At our last hearing we also heard about a few other provisions in the final rule that were problematic including: the retroactive application of the location or siting restrictions; the requirement that unlined impoundments that exceed a groundwater protection standard close with no opportunity to remedy the problem through corrective action; and that surface impoundments that miss a deadline to assess

structural stability must stop operating and close. Forced closure of impoundments with no analysis of whether the impoundment is, or can be, operated safely may be appropriate under a self-implementing rule with no regulatory involvement – but the goal of the draft legislation and State permit programs is to ensure that surface impoundments are operated safely and if they are not – then they will be corrected or closed.

As we work on this draft legislation we acknowledge the amount of time and effort that EPA put into drafting a final rule that is fully protective of human health and the environment and because actions speak louder than words, we did this by directly incorporating the exact provisions and the policy of the final rule into the discussion draft. That being said, we still believe that a legislative solution is the best approach to dealing with the regulation of coal ash because of the significant limitations of the rule.

We look forward to hearing from all of our witnesses and hope Mr. Stanislaus will be able to provide some helpful comments on the discussion draft next week. In particular, ECOS and ASTSWMO since they will be tasked with creating permit programs that meet the minimum federal criteria set out in the legislation.

I would like to again thank the Administration for all of the cooperation we have received on this issue. EPA has been extremely constructive and helpful during the last Congress and recently working through the issues with the final rule and the discussion draft. I would also like to specifically thank ECOS and ASTSWMO for their continued participation and invaluable input on the mechanics of implementation. Last, I would like to express my appreciation to Mr. McKinley for his longstanding leadership on this issue as we continue the process of trying to figure out how to effectively regulate coal ash.

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